IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CLARENCE BOREL,

Plaintiff

vs.

FIBREBOARD PAPER PRODUCTS, INC., ET AL,

Defendants.

CIVIL ACTION NO. 6449

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
FEB 22 1972
JAMES R. COONEY, CLERK
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9-28-71

A. M. SESSION

THE COURT: Please be seated. Mr. Barnes, you may proceed.

MR. BARNES: Your Honor, I might point out that the witness has been sworn.

MARION McMANUS,

having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, did testify as follows:

DIRECT EXAMINATION

BY MR. BARNES:

Q Would you state your name, please?

A Marion McManus.

Q Mr. McManus, I will ask you to speak right into the microphone so the jury and the Court and those here can hear you, please. Where do you live, Mr. McManus?

A In Houston.

Q And what is your occupation or profession?

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A Insulation contractor.

Q And how long have you been in that type of business, sir?

A Twenty-one years.

Q What is the name of the particular company that you are associated with?

A The Fuller-Austin Insulation Company.

Q Fuller-Austin?

A Uh-huh.

Q And what is your capacity or connection with that company?

A President.

Q Fuller-Austin Company is a contracting company. Can you tell the jury, please, sir, what particular type of contracting that you may specialize in, if you do?

A Yes, we specialize in industrial insulation.

Q All right, sir, is that to be distinguished, as I understand, from just general construction, contracting?

A Yes, sir, industrial insulation contracting is a specialty contracting.

Q All right, sir, and in connection with this specialized type of contracting do you have

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occasion to hire Union insulators to work for you as your employees, sir?

A Yes, sir, we do.

Q All right, in connection with carrying out that specialty of your business do you purchase thermal insulation products containing some asbestos?

A Yes, sir.

Q And are these products purchased generally by you specialized contractors such as your company, sir?

A Yes, sir, generally they are.

Q Are they purchased generally by the general public?

A No.

Q Now in connection with your work, Mr. McManus, have you had an occasion to utilize safety devices for the protection of your employees?

A Yes, sir, we have and we do.

Q Can you give the jury, please, sir, an idea of what type of safety devices that you have been employing in your business?

A Well, respirator types that are used by the

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workers, dust collector systems that are put on the saws. These are the basic types.

Q All right, sir, have you ever had an occasion to utilize exhaust fans say in a shop condition to ventilate the dust or exhaust the dust out of the shop?

A Yes, sir, they normally are in shops or in enclosed areas.

Q How about in connection with the power saws which your company might use to work with insulation products?

A Well, we either use blowers, big fans to blow the dust away from the individual who is working on the saw or dust collector systems.

Q All right, sir, as an insulation worker contractor, Mr. McManus, are you concerned with just general good-housekeeping practices in the insulation trade?

A Yes, sir, we are.

Q And can you give the jury and the Court some idea of about how long that your particular company, Fuller-Austin has been employing these safety devices that you have just described?

A Well, at least for the last fifteen years.

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Q All right, sir, and can you give the jury, please, sir, your idea of why such devices are utilized by insulation contractors such as yourself?

A Well, obviously the breathing of dust is not a healthful thing, both as protection to the worker and as a safety device to clear the air around the working part of the saw to prevent accidents.

Q Based on your experience in this type of trade, Mr. McManus, do you have an opinion as to whether or not the inhalation of the dust created in applying the products is or is not harmful to the body?

A Well, we believe it is.

Q Has this belief existed for some period of time and, if so, please tell the jury approximately how long.

A Well, I would say since we have been using power equipment.

Q All right, sir, is that for this fifteen year period?

A Yes, sir, for the last fifteen year period.

Q Mr. McManus, in your history as an insula-

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tion contractor have you ever had any difficulties or problems with persuading the workers who are employed by your company to utilize these protective devices in the field?

A Well, they are made available to the men and we recommend that they use them. However, this is at the option of the worker and normally it is very difficult to get people to use them even in confined areas where there is an awful lot of dust involved.

Q Mr. McManus, when you buy thermal insulation products from the manufacturer do you recognize and know that they are going to contain some asbestos?

A Yes, sir, we do, we know that.

Q And then when you receive these products, thermal insulation products containing some asbestos, do they live up to your expectations as to the constituents of the products?

A Well, they are in the form we expect to receive them.

Q Incidentally, was Charles Borel employed by Fuller-Austin on the Texgas job at Winnie?

A Yes, sir, he was.

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Q And in that connection did your company utilize Ruberoid products?

A No.

Q Have you recognized the existence of asbestosis as an occupational disease under workmen's compensation?

A Yes, sir, we do.

Q Have you carried this type of compensation for many years?

A Yes, sir, we have.

Q Could you give the jury an idea of about how many years you carried this?

A Since we began in business, since 1934.

Q All right, sir, do you know of any way that the use of thermal insulation products by the insulators in the field can be made safer for them and, if so, please describe how this could be done.

A Will you repeat that question.

Q I say is there some way that you know of, based on your experience as an insulation contractor how to improve the safety to an insulator in the field using asbestos products?

A Well, with the materials available to us the

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only thing that we know today that can be used is the safety devices such as respirators, masks and this type of thing.

Q All right, sir, Mr. McManus, is this something of a necessity that has to be done in the field where the job is actually taking place by the contractor?

A Or where the work is being performed.

MR. BARNES: I pass the witness, Your Honor.

THE COURT: Do any of the defendants wish to interrogate the witness?

MR. WELLER: No.

THE COURT: Mr. Stephenson, you may proceed.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. McManus, I am Ward Stephenson, and I represent Mrs. Borel, Clarence Borel's widow. You have recognized, I believe your testimony is that asbestos causes asbestosis and you have know that for quite a number of years?

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A No, I haven't known that quite a number of years.

Q How long have you known it?

A For the last five or six years.

Q Only the last five or six years?

A Uh-huh.

Q Well, I understood you to say that you had workmen's compensation covering employees and you had that covering asbestosis since 1944?

A Well, we have, that's correct. However --

Q You didn't know that it covered the disease, I mean?

A Well, I knew that workmen's compensation covered the disease.

Q But you only learned of asbestosis four or five years ago?

A We learned -- yes, I guess I would say that.

Q All right, sir, are you familiar with Paul Petrosky?

A Yes, sir, I am.

Q And Jimmy Hord, Sabine Insulation, and the Reed Company?

A Yes, sir.

Q I believe they are in the same business that

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you are in?

A Yes, they are.

Q And do you recognize now that some of the major clients, I believe that's what you call companies that give you invitations to bid, I believe they are referred to as clients or customers, are they not?

A Yes, sir, they are.

Q Are you familiar with the fact that the clients now are submitting invitations to bids requiring that asbestos-free materials be used?

A I have heard that is being done.

Q And as a matter of fact did you bid on a Gulf job where this was in the invitation to bid?

A No, not to my knowledge.

Q You didn't bid that job?

A I don't know what job you are referring to.

Q The Gulf Oil job in Port Arthur.

A Well, as far as I know, no, no, we didn't bid on the job and I didn't see the inquiry.

Q But you are familiar with the fact that some clients now are requesting total asbestos-free products on their insulation jobs?

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A I understand they are.

Q All right, sir, thank you. Now I commend you for having respirators available and dust collection systems on permanent installations. Did you do any of this because you were told by any of the major manufacturers of asbestos products that their materials were dangerous to the health of employees and would cause asbestosis?

A No, we didn't.

Q Do you know -- let me ask you this. Do you know that the manufacturers, such as Ruberoid and the other defendants in this case, are contending that you, the contractor, should bear all of the fault of workers getting this disease?

A No, I didn't know that.

Q Did you come over here voluntarily?

A Yes, sir, I did.

Q Mr. Petrosky, have you been in any of the manufacturing plants where these companies have their own workers there subject to workmen's compensation --

THE COURT: McManus.

MR. STEPHENSON: I am sorry, Judge, I forget, Mr. McManus, I didn't mean

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to call you by some other name.

A Restate the question, please.

Q Are you familiar with the manufacturing plants that manufacture asbestos insulation material and the safeguards they put around their employees where workmen's compensation cost is involved there?

A Not specifically, no.

Q All right, sir, can we say then, Mr. McManus, in summary, that the manufacturers of asbestos insulation material have done nothing to assist your company through information or materials or safety devices or suggested systems or any other way as to how to apply their product safely and without harm to the worker?

A Well, they are publishing information through I believe NIMA, which is the National Manufacturers Insulation Association, I believe that is being made available to the contractor.

Q And how long has this been made available?

A Within the last four or five years.

Q Uh-huh. More specifically probably within the last two years?

A I said four or five.

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Q It could be two, I say, is what you say?

A Well, I don't know.

MR. STEPHENSON: Thank you, Mr. McManus.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. BARNES:

Q Did you know Mr. Claude J. Tomplait, Mr. McManus?

A No, I didn't know him.

Q The last question, sir, In your business of these fifteen or twenty years have you found that asbestos-containing products have a wide variety of uses, useful purposes and serve useful purposes in the field where the temperatures are extremely high?

A Oh, yes, sir.

MR. BARNES: Thank you, Your Honor.

THE COURT: You may be excused, Mr. McManus.

Who do you have next?

MR. BARNES: William O. Dailey.

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I think he is in the hall. I think he will be a very short witness, Your Honor.

THE COURT: All right.

WILLIAM O. DAILEY,

having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, did testify as follows:

DIRECT EXAMINATION

BY MR. BARNES:

Q State your name, please.

A William O. Dailey.

Q Mr. Dailey, I will ask you, if you will, please, sir, to get as close to that mike as I am to this one in order for us to hear you better.

A Thank you, sir.

Q Mr. Dailey, where do you live?

A Houston.

Q What kind of business are you in?

A Insulating contractor.

Q And what is the name of your contracting company?

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A. C. & S., Incorporated.

Q And what does that stand for, sir?

A Just A. C. & S., Incorporated.

Q All right, what is your particular capacity with this company?

A District Manager of the Houston District.

Q And how long have you been in this insulation contracting business?

A A little over nineteen years.

Q And can you tell the jury whether or not in this insulating contracting business you are in a specialized contracting business?

A Well, specialize in thermal insulation, primarily for industrial and commercial insulation.

Q And just hurriedly in this respect, do you employ Union insulators?

A Yes, sir, we do.

Q And you purchase your materials from manufacturers of these products to be applied by these Union insulators?

A That's right.

Q Mr. Dailey, have you, as an insulation contractor, had an occasion to use any safety devices

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or techniques in the field for the protection of the worker applying insulation products?

A Yes, sir, we have.

Q Can you tell the jury what types of devices or practices or techniques you employ?

A Well, we use the so-called hard hat safety helmet, protective eyewear, masks for breathing purposes.

Q Masks, is that sometimes referred to as a respirator?

A Yes.

Q How about ventilator fans or suction exhaust fans for shop areas?

A Oh, yes, we use exhaust fans in the shop area and also in our scaffolding and so forth, that type of thing, we have safety precautions.

Q Have you had an occasion to utilize mechanical suction devices on your power saws?

A Yes, sir.

Q And can you give the jury and the Court an idea, Mr. Dailey, of approximately how long these devices have been utilized by you for worker protection?

A Well, I would say that we have used them as

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long as I have been in the business.

Q All right, sir, have you become aware since you have been in the business of -- that it is harmful to the body to inhale these fumes or these dust particles?

A Yes, sir, I have heard testimony to that effect.

Q How long have you, as an insulation contractor, been aware that the inhalation of asbestos fibers was harmful to the human body?

A The first time I ever heard of the disease called asbestosis was probably, oh, I would have to say thirteen or fourteen years ago.

Q All right, sir, are you aware of the disease of asbestosis being one of those occupational diseases covered by your workmen's compensation insurance?

A Yes, sir.

Q And have you carried this type of workmen's compensation for many years?

A Oh, yes, sir, as long as I have been in the business.

Q As long as you have been in the business?

A Yes, sir.

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Q And do you ever have any difficulty in persuading the insulation workers in the field to take advantage of these safety devices that you make available for his use?

A Constantly.

Q Is this one of your major problems?

A This is indeed.

Q Are you a member of any contractors association, Mr. Dailey?

A The Houston Insulation Contractors Association.

Q Does this association discuss problems of health hazards and their peculiarities to the trade?

A Yes, sir, they do.

Q About how long has this type of discussion been going on in the association?

A Well, I only know firsthand for a period between five and six years, since I have only been in Houston that long. Prior to that time I am sure there has been some discussion of it.

Q All right, sir, Mr. Dailey, in your nineteen years of experience as an insulation contractor has it been your own personal experience that

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every single use of any product containing any asbestos poses a hazard to the worker?

A My personal opinion?

Q Yes, based upon your experience.

A No, sir, I don't think so.

Q When you buy these insulation products which contain some asbestos you realize and know and you expect them to contain this product, this asbestos fiber, do you not?

A Yes.

Q And when you receive the thermal insulation products of asbestos in it that is the condition you expect it to be in when you receive it, is that correct?

A Yes, assuming it arrives in good condition, unbroken and so forth.

MR. BARNES: I pass the witness, Your Honor.

MR. WELLER: I want to ask one question, Your Honor.

DIRECT EXAMINATION

BY MR. WELLER:

Q Did you at any time employ Clarnece Borel?

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A I personally did not. I believe that predecessors to our company did.

Q But you, since you have been with the company you don't have any knowledge of any employment?

A To the best of my knowledge, no, sir.

MR. WELLER: Thank you, sir. That's all.

CROSS EXAMINATION

BY MR. STEPHENSON:

Q Mr. Dailey, I have a few questions to ask you. Number one, are you aware of the fact that the manufacturers of asbestos materials such as Ruberoid, Johns-Manville, Fibreboard and so on, are contending in this case that the employers, the contractors, such as your company, are totally to blame for any breakdown in safeguarding the workers?

MR. TUCKER: That is not a correct statement at all. I hate to interrupt Mr. Stephenson, but the contention in evidence from the pleadings in the case is that the contractors

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are the ones who have control of the working conditions and the responsibility for providing the equipment and the conditions. There is nothing in the pleadings and no contention that they are the ones who are responsible here, but it is -- the evidence shows beyond any doubt that they are the ones who have control of the working conditions and these people are working for them. This is a mis-statement of the contention of the defendants and we object to it for that reason.

THE COURT: The Court will overrule both the argument, the statement and the objection. I do think that the question should be reworded because I believe you used the word "sole" or "exclusive", I think the Court will sustain the objection on this, and just overrule the statement and the argument and we sustain the objection and permit counsel to restate the question.

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MR. STEPHENSON: Thank you, Your Honor.

Q Mr. Dailey, what I am driving at is the defendants, among other defenses in the case, have asserted that the safety of the worker is the responsibility of the contractor and it is not a responsibility of the manufacturer and in that extent they are trying to lay the blame on you, the contractor. Before you came to testify --

MR. TUCKER: Same objection, Your Honor.

THE COURT: Objection overruled.

Q Were you made aware of this by whoever called you to testify?

A No, sir, I don't believe I am specifically aware of that.

Q All right, sir, Mr. Dailey, do you have any facilities in your company or is it large enough for you to engage in testing of asbestos products to determine their safe or non-safe characteristics or what safe measures should be used or how to reduce the dust going to the worker, do you have testing facilities such as that?

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A We do not have specific facilities for that.

Q I don't believe you are employing industrial hygienists in your company?

A Not directly.

Q Now the point I make by this, Mr. Dailey, actually, I think, is one in support of the contractors. Have the manufacturers of this asbestos material come into your office or your place where you work and in an effort to make dust counts or to study how much asbestos, dust from their material is created, have any of the manufacturers come into your place and asked your cooperation about this?

A Not that I can recall.

Q All right, sir, are you at all familiar with Threshold Limit Values?

A Restate the question.

Q Are you familiar with Threshold Limit Values?

A Generally.

Q All right, sir, do you know what -- what is the American Conference of Industrial Hygienists recommended Threshold Limits for asbestos?

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A No, sir.

Q Have you gotten any material from the manufacturers such as Johns-Manville, advising you about this Threshold Limit Values and what your workers should not be exposed to?

A Not directly.

Q Have you gotten it from any of the manufacturers advising you about what Threshold Limits should not be exceeded?

A Not specifically or directly, no.

Q All right, sir, Mr. Dailey, has your company been asked in invitations to bid by clients to submit bids on materials totally free of asbestos?

A On occasions.

Q All right, sir, now --

A Not always.

Q Yes, sir, there has been a safety warning introduced in the case and it says that among other things, I will be reading, "This product contains asbestos fibers. Inhalation of asbestos in excessive quantities." Do you know what is meant by "excessive quantities"?

A No, I suppose not, since I don't know the Threshold Limits

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Q "Over long periods of time may be harmful". Do you know what is meant by long periods of time?

A I think it is probably a matter of individual judgment.

Q All right, sir,"If dust is created when this product is handled, avoid breathing the dust". Is there any way a worker can apply, cut, saw, scribe and mix asbestos material without creating dust?

A Yes, sir.

Q How can he do that?

A Wear an inhalator or respirator.

Q Sir?

A Wear an inhalator or respirator.

Q Well, have you worn any of the respirators, do you work with the tools?

A No, sir.

Q Now this caution goes on further.

A Do you want to back up a minute?

Q Sir?

A I want to back up a minute.

Q Yes, sir.

A You asked me two questions, have I ever

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worn a respirator.

Q Yes, sir.

A Or do I work with the tools. I do not work with tools, I have worn a respirator.

Q All right, how long ago did you wear the respirator?

A Oh, maybe some time ago, I couldn't say for sure.

Q Were you working with your tools at that time?

Q How long has that been?

A Oh --

Q More than nineteen years?

A Yes.

Q Now, "If adequate ventilation control is not possible, wear respirator", and so on. Have any of the manufacturers told you what is or is not adequate ventilation control?

A Not specifically. Let me back up just a minute, sir, I don't want to mislead you about wearing a respirator. I do not wear the respirator as an asbestos worker, but I have worn a respirator in working with the tools of another trade.

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Q I see. All right, sir, then you have no experience with the respirators in the asbestos field personally?

A Not only other than just try them on.

MR. STEPHENSON: I thank you, Mr. Dailey.

THE COURT: Anything further, Mr. Barnes?

MR. BARNES: Yes, sir, I have one question.

REDIRECT EXAMINATION

BY MR. BARNES:

Q Mr. Dailey, Mr. Stephenson asked you about a request for you to bid on jobs involving asbestos-free products. Can you give the jury some idea about whether this has been recently, a long time ago or --

A Well, I would say that it has been relatively recent.

MR. BARNES: Thank you, sir, that's all.

MR. WELLER: Could I ask one question, Your Honor?

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THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. WELLER:

Q Mr. Dailey, do you use cork and other materials like that for insulation?

A Yes, sir, we use cork and other materials like that. However, the use of cork is very minimal now as insulation.

Q I see. For thermal insulation, high heat insulation, do you use products containing asbestos?

A We use silicates, we use glass fibers.

Q I see, and are these products reasonably suited for the purpose of insulating high temperatures?

A Within given temperature ranges, yes.

Q Now the asbestos products used in the 1500 to 1600 range --

A The higher end.

Q You don't have any substitute for that, do you?

A No.

MR. WELLER: That's all.

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THE COURT: All right, Mr. Dailey, you may be excused. You may come in front of the bench and leave the courtroom.

MR. BARNES: The only other thing I have in this connection, I would like to make a statement by way of a supplement to the answer to Interrogatory No. 23.

THE COURT: All right.

MR. BARNES: And that is that Ruberoid Company, whom I am representing here, is a contributing member to the National Insulation Manufacturers Association.

Your Honor, subject to the Court's allowing me to develop a bill of exception later, we rest.

THE COURT: All right.

MR. WELLER: Your Honor, I have one offer for the purpose of the bill of exceptions. I have misplaced it temporarily, could I offer it for the record later?

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THE COURT: You may.

Do any of the defendants have anything further?

MR. TUCKER: No, sir, I believe all the defendants rest.

THE COURT: For the purposes of the record, the record will show that all defendants have rested.

MR. WELLER: Yes, sir.

THE COURT: Mr. Stephenson?

MR. STEPHENSON: We have nothing in rebuttal, Your Honor, other than just the one matter, the formal nature which you said I could put in afterwards.

THE COURT: All right.

Members of the Jury, we are going to give you until 10:30. Please return at that time. If you will leave the courtroom now, please leave.

(REPORTER'S NOTE: Whereupon the jury withdrew from the courtroom).

THE COURT: Do any of the parties have any matters you would like to

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take up with the Judge that needs to be a part of the record in this matter?

MR. BARNES: I do, Your Honor.

THE COURT: If so, you may proceed.

MR. TUCKER: Your Honor, we have a stipulation which has been approved by Mr. Stephenson and the various attorneys. This relates to the four defendants who settled and sets out the amount of the settlements. Those who are out of the case now, and we have the stipulation which we would like to have filed and approved by the Court.

THE COURT: It will be made a part of the record.

MR. ARNOLD: Your Honor, on behalf of Philip Carey Corporation and Armstrong Cork Company and each of them, I desire to renew and reurge our motion for directed verdict which was made at the time of the plaintiff's

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resting. It may be understood that I will not have to retype it, but just reurge the original motion.

THE COURT: All right.

MR. BARNES: Your Honor, on behalf of the Ruberoid Company, I have just filed my motions for directed verdict at the close of all of the evidence and the record reflecting that I called it to the Court's attention.

THE COURT: All right, Mr. Weller?

MR. WELLER: Your Honor, on behalf of Fibreboard Corporation I have on file a motion for an instructed verdict at the close of all of the evidence and I earnestly request the Court to consider it. I take the position that there hasn't been shown any exposure to my product in this case.

MR. PATE: Your Honor, on behalf of Johns-Manville we would like to

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reurge our motion for instructed verdict which we filed at the close of Plaintiff's testimony. We would like to reurge it at this time.

MR. DUNCAN: Your Honor, on behalf of Pittsburgh-Corning Corporation we would like to reurge our motion for instructed verdict which was filed at the close of plaintiff's case in chief after the conclusion of all of the testimony in this case and particularly we urge that the Court consider the fact that Pittsburgh-Corning Corporation has been manufacturing one product, unibestos, only since August, 1962, and in the status of the medical testimony which has been adduced at this trial could not reasonably have contributed to any disease which Mr. Clarence Borel may have contracted as urged by the plaintiff.

THE COURT: All right, the motions for instructed verdict filed and

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called to the Court's attention at the conclusion of the plaintiff's evidence and also at the conclusion of all of the evidence in the case and before the case is submitted to the jury will be overruled. The Court will enter one order to this effect.

MR. WELLER: Your Honor, I have an order for that.

THE COURT: It includes all of the defendants?

MR. WELLER: Yes, sir, Your Honor, I had it include all of the defendants.

THE COURT: We will stand in recess until 10:30, and the attorneys may come to the chambers and we will discuss the charge, if you have some suggestions to make to the Court.

MR. STEPHENSON: Your Honor, may I put in the date of settlement for the Industrial Accident Board into the record?

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THE COURT: Yes.

MR. STEPHENSON: I would like to put this letter from the Texas Industrial Accident Board into the record showing the seventh month, 31st day of 1969, the compromise settlement agreement was made by Mr. Borel with whatever insurance company was involved.

THE COURT: It may be offered.

MR. WELLER: May I now offer this for the bill of exceptions, I found the document?

THE COURT: It may be offered for the purposes of the bill of exceptions only.

MR. WELLER: This is a certified copy of the workmen's compensation board of June 1, 1969, signed, Clarence Borel.

THE CLERK: That will be Defendants' 31.

THE COURT: We will stand in recess until 10:30.

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(REPORTER'S NOTE: Whereupon a recess was taken and court resumed.)

THE COURT: Please be seated. Ladies and Gentlemen of the Jury, we have now approached that time when the attorneys will make their arguments, and under the Rules of Procedure, the plaintiff having the burden of proof, has the right to open and close the arguments. The defendants will argue in the middle. The attorneys will present to you the arguments on the evidence which they think is favorable to their particular position. I am sure they will clarify the case considerably to you. They will argue to you what issues you are to find. After they have concluded the Court will give you a charge. I will charge you on certain definitions and also on the law applicable to such facts as you may find. In other words, you are a fact-finding body. You determine whether a fact exists or

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whether a fact doesn't. Whether there is sufficient evidence to justify your findings of a fact. Also, in a situation of fact-finding you can fine one way or another way. In other words, you have two ways to go. If a matter is stipulated or agreed upon, of course, you do not have to determine that fact, but if there is a dispute on a matter of fact, then the jury must determine it. Then conditioned and predicated upon how you find that fact you will apply the law that the Court gives you. Now that is the -- briefly and simply the outline that will be followed. Mr. Stephenson will argue for the plaintiff and some three of the defense attorneys will argue probably before Noon. Mr. Tucker, I believe, will lead off for the defense attorneys and several of the other gentlemen will also argue. We are ready to proceed, Mr. Stephenson.

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(REPORTER'S NOTE: Whereupon the closing arguments were given by each respective counsel representing each respective defendant.)

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